



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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ATTORNEY GENERAL**

November 8, 1973

The Honorable F.B. Lloyd, Jr.
District Attorney
P. O. Drawer 1996
Alice, Texas 78332

Letter Advisory No. 70

Re: Nepotism - effect of
existing contract of
employment

Dear Mr. Lloyd:

You have submitted two questions to us involving the nepotism laws of the State, Article 432, V. T. P. C.

Your first question asks:

"1. A new County Commissioner was elected and took office on January 1, 1973. At the time he took office, his brother-in-law had been serving for the preceding 22 months as a County Road Foreman for the same Commissioner's Precinct for which the new Commissioner was elected. The new Commissioner retained Road Foreman brother-in-law in the same capacity. Does this constitute a violation of Article 432, V.A. T. P. C.? Can the brother-in-law continue to serve as a Road Foreman during the Commissioner's tenure in office?"

The prohibitory language of Article 432, V. T. P. C., is, "No officer of this State . . . shall appoint, or vote for, or confirm the appointment to any office . . . of any person related. . . ."

In our opinion this language does not require a newly elected officer to cause the discharge of any relative of his who is within the prohibited relationship. It does prohibit any act resulting in employment or an improvement of position. Compare Attorney General Opinion M-671 (1970).

In Attorney General Opinion M-857 (1971), this office considered the validity of a contract of employment of a teacher whose first cousin had been elected a trustee of the school board but had not yet qualified for office at the time the contract was made. It was concluded that the contract was valid and remained a valid contract after qualification of the school board member. The opinion distinguished other opinions holding differently on the ground that they involved employments on a month-to-month basis, in effect a new contract each month which would be invalid if made at a time after the election or appointment of the employing officer. See Attorney General Opinions O-1408 (1939), O-6406 (1945) and O-7516 (1946). Compare Attorney General Opinions O-361 (1939), O-667 (1939), O-6330 (1945), V-184 (1947), V-785 (1949) and V-853 (1949).

Our answer to your first question, therefore, would depend on the nature of the Road Foreman's employment. If, in fact, he qualifies as a "road superintendent" appointed for a term of two years and removable only for cause under Article 6743, V. T. C.S., he may complete his term. If he has been employed under an enforceable contract for a term of months, he may remain employed until expiration of that term. If, on the other hand, his employment is at the will of the Commissioner or the Commissioners Court, then he may not be "retained."

Your second question asks:

"2. The District Clerk of Brooks County, Texas, employs a relative within the prohibited degree of another County Commissioner. The Deputy Clerk was employed after the Commissioner took office. The same situation exists in the Tax Collector's office. In each instance, the position assumed by the relative of the Commission was for a position as Deputy Clerk that had existed for years. The Commissioners' Court authorizes the number of positions for each office, but does not direct the specific hiring or firing of any Deputy Clerk. The Commissioners' Court does set the salaries for all positions in each office.

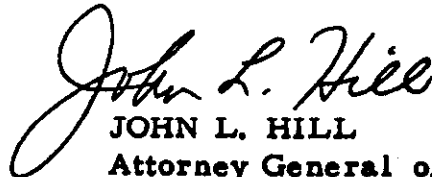
"Does this constitute a violation of Article 432, V.A. T.P.C. ? Can these relatives continue to serve as Deputy Clerks? "

We believe this to be a shade of the first question you have asked. Article 432, V. T. P. C., prohibits the members of the Commissioners Court from appointing, voting for, or confirming the appointment of a relative in the proscribed relationship to any office. It does not prohibit there being two close relatives employed within the local government.

If it is true, as your inquiry states, that the commissioners play no role in the selection and appointment of the deputy district clerk and the deputy tax collector, we do not believe their appointments are prohibited.

We would caution that the provisions of Article 434, V. T. P. C., prohibiting "trading" must be kept in mind.

Yours very truly,


JOHN L. HILL

Attorney General of Texas

APPROVED:


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